

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Inquiry Concerning Deployment of)
Advanced Telecommunications Capability)
to all Americans in a Reasonable and Timely)
Fashion, and Possible Steps to Accelerate)
Such Deployment Pursuant to Section 706 of)
the Telecommunications Act of 1996)

CC Docket No. 98-146

To: The Commission

REPLY COMMENTS OF METRICOM, INC.

Metricom, Inc. ("Metricom"), by its attorneys, hereby replies to the comments filed in response to the Commission's Notice of Inquiry ("NOI") under Section 706 of the Telecommunications Act of 1996.¹

A. The Commission Should *Not* Retain its Current Definition of "Advanced Telecommunications Capability."

The Comments clearly demonstrate the need for a more flexible transmission rate standard in defining "advanced telecommunications capability" ("ATC").

BellSouth argues that to change the definition now would only "confuse the industry."² This argument is specious. Section 706 does not require or exclude any particular technology or

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1. Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Notice of Inquiry*, FCC 00-57 (rel. Feb. 18, 2000).
 2. Comments of BellSouth Corp. at 8.

bandwidth . Therefore, altering the definition of what constitutes ATC to be more inclusive of technologies that support ATC in order to better reflect Congressional intent should confuse neither the industry nor the Commission as to what constitutes ATC. U S West argues that since nothing has changed since last year no changes in the definition of ATC are justified.³ This argument ignores the possibility that the current definition was wrong to begin with, which the comments overwhelmingly demonstrate. OPASTCO argues that 200 kbps should be adequate for the provision of DSL.⁴ However, to place advanced services within the reach of all Americans, as Section 706 requires, it is critically important to set a realistic benchmark that can be achieved by a wide range of technologies – not just DSL. To do otherwise would place the Commission in the position of picking technology winners and losers, and would disserve consumers by limiting choice and slowing overall deployment.

Reviewing current or planned offerings of actual competitors today, it is apparent that the industry does not take the view that ATC necessarily means 200 kbps in both directions. The variety of DSL that is most often selected for deployment to residential consumers is asymmetric, with an upstream bandwidth considerably less than 200 kbps.⁵ In other words, even a substantial portion of DSL deployment falls short of the Commission's current standard for ATC. Thus, the current

3. Comments of U S West Communications at 2.

4. Comments of OPASTCO at 3. Other comments in a similar vein focus on DSL and wireline technologies and ignore alternatives. *See, e.g.*, Comments of Citizens Communications at 11 (256 kbps download speed); Comments of GTE at 9 (200 kbps)

5. *See, e.g.*, Comments of SBC Communications at 5 (“basic” ADSL offers upstream speed of 128 kbps); Comments of Bell Atlantic at 3 (200 kbps upstream is too limiting).

standard fails to give an adequate picture of current deployment or demand. At a minimum, the definition of ATC needs to accommodate this asymmetry.⁶

Moreover, even a downstream speed of 200 kbps is unnecessary and unrealistic given current demand and technological alternatives to wireline services. For example, Northpoint states that it offers SDSL service at 44 kbps and 160 kbps.⁷ SBC observes that IDSL offers a speed of 144 kbps in both directions.⁸ Jato states that it offers transmission speeds starting at 184 kbps.⁹ Significantly, MCI and Sprint, both wireless ATC providers, each intend to offer entry-level services to residential users starting at 128 kbps, the same speed as Metricom's next-generation Ricochet2.¹⁰ None of these advanced service offerings meets the Commission's current benchmark in even *one* direction.¹¹

The better approach, as Metricom has argued, is to recognize that differences in technology justify different standards for what constitutes "advanced." In this way, the Commission will

6. See Comments of the National Telephone Cooperative Association at 2-4.

7. Comments of Northpoint Communications at 3 n.10.

8. Comments of SBC Communications at 5.

9. Comments of Jato Communications Corp. at 4.

10. Comments of MCI WorldCom at 10, Comments of Sprint Corp. at 5.

11. It is noteworthy that the Commission's definition of ATC excludes IDSL, which, at a transmission rate near that of ISDN, is the only "flavor" of DSL that can be offered to telephone subscribers served through a remote terminal. Remote terminals are deployed in many new suburban residential developments, and if IDSL is excluded then the Commission has a distorted view the actual deployment of ATC to all Americans.

stimulate competition among different services and technologies and thus encourage the rapid deployment of network infrastructure.¹²

However, even under a more relaxed definition, ATC is *not* being deployed to all Americans on a reasonable and timely basis because, as the comments reveal, many advanced services are still in the planning stage.¹³ Thus, the Commission should act to encourage their deployment, as required by Section 706, by being more indecisive in its definition of ATC.

B. The Commission's Regulations Should Not Disadvantage Particular Competitors Based on the Technology or Business Model They Select to Deliver Advanced Telecommunications Capability

In its Comments, Metricom described ways in which the Commission's regulations disadvantage facilities-based Internet service providers. Since these providers offer an information service, not a telecommunications service, they are effectively disadvantaged by regulations designed specifically to further the deployment of telecommunications services. In this regard, it is noteworthy that Section 706 speaks in terms of "advanced telecommunications *capability*," and not "advanced telecommunications *service*."¹⁴ The distinction between a telecommunications

12. See Comments of CIX at 3 ("the Commission should explore regulatory options that encourage a multiplicity of different transmission media including satellite, wireless, cable, as well as PSTN-based"); Comments of SBC Communications at 6 ("the Commission should avoid picking 'winners' and 'losers,' and should not eliminate technologies, like cable modems and wireless, which share a transport medium"); Comments of Nortel Networks at 10 (the Commission "should avoid impeding the deployment of higher speeds and alternate technologies").

13. See, e.g., Comments of ALTS at 6 (many of ALTS' members "have business plans that include the provision of [broadband] services to residential markets in the future").

14. "Telecommunications" refers to an end-to-end path for the transmission of a user's information. 47 U.S.C. § 153(43). A telecommunications capability may be made available
(continued...)

service and a telecommunications capability is fundamental to Congress's intent in Section 706, since for many Americans, access to an advanced telecommunications *service* per se is of little use. To avoid being left on the wrong side of the "digital divide," Americans need convenient and high-speed access to the Internet.¹⁵ It is this advanced telecommunications capability that Section 706 charges the Commission with encouraging.¹⁶ Therefore, the Commission should not discriminate against competitors who choose to provide a telecommunications *capability* as opposed to a telecommunications *service* because such discrimination will lead to a failure to deploy ATC.

Many commenters echo Metricom's request for competitively neutral regulations. For example, the Wireless Communications Association calls for the elimination of third-party barriers to the deployment of fixed wireless technologies.¹⁷ WCA, like Metricom, urges the Commission to use the regulatory authority conferred by the Communications Act to "create regulatory symmetry between like service providers."¹⁸ The utility members of the United Telecom Council, like Metricom, face state and local barriers to deployment of facilities, and ask the FCC to preempt these

14. (...continued)
to the public for a fee, in which case it is referred to as a "telecommunications service." See 47 U.S.C. § 153(46). However, a telecommunications capability also may be used internally by a company in order to provide an information service, such as Internet access service, to the public. See 47 U.S.C. § 153(20).

15. See Comments of Bell Atlantic at 3 ("one of the primary applications for advanced telecommunications capabilities, particularly in the residential market, is high-speed access to the Internet")

16. See Comments of Cox Communications at 3 ("the Commission should focus on the deployment of network infrastructure," as opposed to specific services).

17. See Comments of Wireless Communications Association International at 27 and Comments to United States Telecom Association at 1.

18. *Id.*

local laws.¹⁹ Consistent with Section 706, the Commission must use its statutory authority to preempt state and local regulations that effectively prohibit one or more categories of competitors from deploying advanced network infrastructure.²⁰ Many other commenters also call for the removal of artificial regulatory barriers that effectively favor one competitor over another.²¹

C. The Commission Should Set Aside Additional Spectrum for Wireless and Unlicensed Use.

Metricom argued in its initial comments that the lack of sufficient spectrum for unlicensed use effectively constitutes a barrier to the deployment of ATC. While Metricom's use of unlicensed spectrum is unique among commenting parties, others also feel a similar need for additional spectrum to encourage the deployment of wireless facilities. Pegasus and Hughes Network Systems, both satellite-based providers, request the allocation of additional spectrum allocation for the

19. See Comments of United Telecom Council.

20. Id. at 4-5.

21. See Comments of GTE at 25 (the Commission "must ensure that [regulatory mechanisms] are non-discriminatory, so that no one segment of the industry is advantaged at the expense of others"); Comments of Alcatel USA at 4 ("correct existing or potential 'competitive' or 'regulatory' barriers to network infrastructure development"); Comments of BellSouth Corp. at 5 ("market participants currently face disparate levels of regulation, but for no rational reason"); Comments of General Services Administration at 8 ("competition will *only* develop if the Commission takes steps to remove significant barriers to competition"); Comments of Prism Communications Services, Inc. at 3-5 ("[c]ompetitive carriers must be able to compete on a level playing field with the incumbent LECs to ensure that consumers enjoy the benefit of true broadband competition").

provision of ATC.²² GTE notes that the Commission should act to facilitate the introduction of “3G” wireless services by making adequate spectrum available.²³

The Commission should heed these pleas to make additional spectrum available for wireless services because robust competition between different types of advanced wireless service technologies will best realize the goal of Section 706 to secure access to ATC by all Americans. As Jato observes, deployment of ATC is not “reasonable and timely” if consumers have access to only one type of advanced service. Instead, reasonable and timely deployment requires that consumers have a *choice* of advanced service providers.²⁴ In addition to DSL and cable (full deployment of which is still years away), the Commission must ensure that consumers have access to a “third pipe” in the form of wireless service.²⁵

CONCLUSION

Metricom urges the Commission to take whatever steps necessary to accelerate the deployment of ATC to all Americans. This can be best be accomplished by: (1) modifying its definition of ATC to account for all technologies and capabilities, (2) eliminating regulatory barriers that discriminate against providers of telecommunications capabilities as opposed to telecommunications services, and (3) allocating more spectrum for wireless and unlicensed uses. The good majority of the commenters in this proceedings, in some form, agree with these

22. Comments of Pegasus Communications Corp. at 4-5, Comments of Hughes Network Systems et al. at 6-8.

23. Comments of GTE at 24.

24. Comments of Jato Communications Corp. at 12.

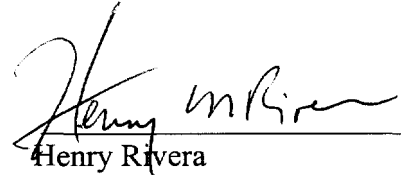
25. See Comments of MCI WorldCom at 10.

recommendations. The Commission must acknowledge this consensus and affirmatively take steps to act in accordance with the views expressed herein, as Section 706 requires.

Respectfully submitted,

METRICOM, INC.

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A handwritten signature in dark ink, appearing to read "Henry Rivera", is written over a horizontal line.

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April 4, 2000